

# Capital Litigation for Arizona Prosecutors

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## JURY SELECTION

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Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL  
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## JURY SELECTION IN CAPITAL CASES

KELLIE JOHNSON  
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## PICKING THE RIGHT JURY

WHILE YOU SHOULD SELECT A JURY TO CONVICT,  
THAT IS NOT YOUR ONLY CONSIDERATION.



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## YOUR GOAL IN JURY SELECTION



TO PICK A JURY THAT WILL RENDER A VERDICT THAT  
PUTS THE DEFENDANT HERE

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## THINGS TO THINK ABOUT



- ASKING A GROUP OF PEOPLE TO DO SOMETHING IN ALL LIKELIHOOD THEY HAVE NEVER TRULY CONSIDERED DOING
- ASKING THEM TO DO SOMETHING INCONSISTENT WITH HUMAN NATURE
- ASKING THEM IMPOSE DEATH DESPITE DEFENSE EFFORTS TO SHAME AND EMBARRASS THEM INTO SHOWING MERCY

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## THE JUROR WE WANT




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## THE JUROR WE GET




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## GOALS OF JURY SELECTION



- GET THOSE WHO CAN'T IMPOSE DEATH OFF YOUR PANEL
- EDUCATE AND HELP THOSE "IN THE MIDDLE" GAIN THE COURAGE TO IMPOSE IT
- TEMPER THOSE WHO BELIEVE IT SHOULD BE AUTOMATIC
- ELIMINATE ALL OF THE CRAZIES

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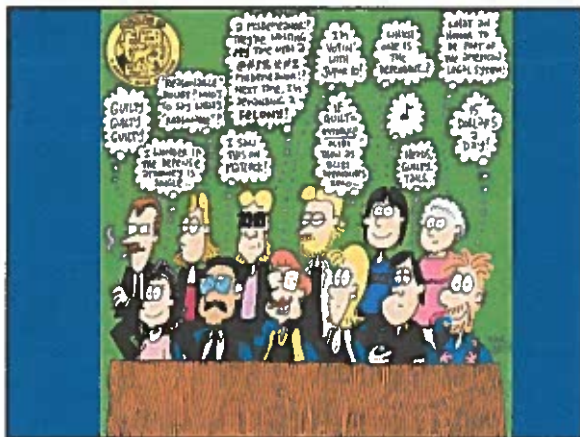
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## JURORS COME WITH THEIR OWN THOUGHTS AND IDEAS

- IT IS IMPOSSIBLE TO "EDUCATE" OR TALK A COMPLETE STRANGER OUT OF FIRMLY HELD OPINIONS.

— YOUR JOB IS TO UNCOVER THOSE OPINIONS AND IDEAS SO YOU CAN GET RID OF THE PEOPLE WHO WILL VOTE AGAINST YOU




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## COLORADO METHOD

- David Wymore
- Former Chief Public Defender




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## COLORADO METHOD

- "WORKS TO CREATE A NON JUDGEMENTAL AND RESPECTFUL ATMOSPHERE DURING JURY SELECTION THAT FACILITATES JUROR CANDOR"




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## PRINCIPLES OF COLORADO METHOD

- INFORMATION STAGE: learning about the jurors views on death penalty.
- RECORD BUILDING STAGE: trying to strike pro death jurors/ keep pro life
- PRINCIPLE CONFIRMATION STAGE: stressing to jurors sentence is an "individual moral judgement"

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## INFORMATION STAGE

- UNCOVERING DEATH VIEWS
- OBJECTIONABLE HYPOS
- URGE COURT NOT TO USE TERMS LIKE "FAIR" AND "APPROPRIATE"




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## THINGS TO LOOK OUT FOR

- QUESTIONS SEEK TO INCLUDE "RELEVANT CASE FACTS".
- KNOW ARIZONA CASE LAW REGARDING COMMITMENT QUESTIONS.




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## TOOLS TO MEET/ COMBAT

- DEATH PENALTY QUESTIONS ON QUESTIONNAIRES:
  - TRY TO USE QUESTIONS REQUIRING THE JUROR TO EXPLAIN THEIR OPINION
  - PERHAPS JUDGE WILL NOT ALLOW REPETITIVE TOPICS




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## KNOW YOUR CASE LAW

- *Witherspoon v. Illinois*, 391 U.S. 510 (1968)
- *Adams v. Texas*, 448 U.S. 38 (1980)
- *Wainwright v. Witt*, 469 U.S. 412 (1985)
- *Morgan v. Illinois*, 504 U.S. 719 (1992)




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## CASE LAW

- *Witherspoon v. Illinois*, 391 U.S. 510 (1968)

– Jurors cannot be excluded for cause simply because they have voiced general objections to the death penalty, or if they have expressed conscientious or religious scruples against its infliction.




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## CASE LAW

- *Adams v. Texas*, 448 U.S. 38 (1980)

– *Witherspoon* set forth a limitation on the State's power to exclude. A juror cannot be challenged based on views about the death penalty unless those views "would prevent or substantially impair" the juror's performance of duties in accordance with instructions or oath.




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## CASE LAW

- *Wainwright v. Witt*, 469 U.S. 412 (1985)
  - US Supreme Court expressly rejects the proposition that proper standard for exclusion found in *Witherspoon*, (i.e. when juror says unambiguously that he would automatically vote against the death penalty regardless of evidence). Court adopts “substantial impairment” standard from *Adams v. Texas*




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## CASE LAW

- *Morgan v. Illinois*, 504 U.S. 719 (1992)
  - Defendant must be permitted to “life qualify” or “reverse Witherspoon” the jury. The belief that death should automatically be imposed upon conviction of a capital offense reflects directly on juror’s ability to follow the law.




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## TYPES OF JURORS

COLORADO METHOD SEEKS TO PUT JURORS IN CATEGORY OF 1-7 DEPENDING ON VIEWS ON DEATH PENALTY




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## RECORD BUILDING STAGE

- REALLY THE SAME AS INFORMATION:  
DEFENSE WILL USE THE SAME QUESTIONS




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## GENERAL CONSIDERATIONS

- YOU CAN SIMPLY USE THEIR METHOD  
AGAINST THEM WITH YOUR OWN  
"HYPOTHETICALS"
- BE ACCOMMODATING AND  
UNDERSTANDING




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## PRINCIPLE CONFIRMATION STAGE

- ISOLATION: GET JURORS TO  
UNDERSTAND SENTENCING DECISIONS  
ARE "INDIVIDUAL MORAL JUDGEMENTS"
- INSULATION: EACH JUROR  
UNDERSTANDS THEIR DECISION WILL BE  
RESPECTED.
- STRESS LAW NEVER REQUIRES A DEATH  
SENTENCE.




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## SAVING THE GOOD ONES

- DRILL INTO PRO DEATH PENALTY JURORS THAT THEY **MUST** KEEP AN OPEN MIND UNTIL THE END NO MATTER HOW HORRIFIC THE CRIME IS
  - EXPLAINING THE PROCESS
  - HYPOTHETICALS
  - OPEN TO BOTH VERDICTS
  - DON'T FORGET NON DEATH PENALTY RELATED ISSUES

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## GETTING RID OF THE BAD

- ✓ IMPRESS UPON THE JUROR THE REALITY OF THE SITUATION... CAN THEY DO IT?
- ✓ TRY TO PREPARE FOR THE DEFENSE "WORST CASE SCENARIO" QUESTION

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## THANK YOU AND GOOD LUCK!

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